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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

BRIAN J. BOQUIST,

Case No. 6:19-cv-01163-MC

Plaintiff,

v.

**DECLARATION OF MICHAEL R.
McLANE IN SUPPORT OF PLAINTIFF'S
MOTION FOR ATTORNEY'S FEES**

OREGON STATE SENATE PRESIDENT
PETER COURTNEY, in his individual and
official capacity; SENATOR FLOYD
PROZANSKI, in his individual and official
capacity as Chairman of the Senate Special
Committee on Conduct, SENATOR JAMES
MANNING, in his individual and official
capacity as member of the Special Senate
Conduct Committee,

Defendants.

I, Michael R. McLane, declare:

1. I am a member of the Oregon State Bar Association. The following statements are true and correct and, if called upon, I could competently testify to the facts and opinions stated below.

2. I am a resident of Powell Butte, County of Crook in the State of Oregon. I am a partner with the Law firm of Lynch, Murphy, McLane, LLP, located in Bend, Oregon. Our firm represents clients state-wide and has offices in Bend, Klamath Falls, and Portland, Oregon. We are a medium-sized firm with six partners, three *Of Counsel* attorneys, three associates, and six staff members.

3. I was raised in Oregon and have ties throughout the Oregon legal community. Our firm has an active litigation practice, and my specific areas of practice include business matters, litigation, and public policy advocacy. I have been licensed in Oregon since 1990 and have done legal work or appeared in numerous judicial districts throughout the entire state. Like Mr. Day, I served as a Circuit Court Judge here in Oregon.

4. At the request of attorney Vance Day and attorney Elizabeth Jones, I have reviewed a significant amount of data, including the summary of the litigation in the case Boquist v. Courtney, *et al.*, each set of billing records, including the hourly rates charged, and their resumes.

5. With respect to the billing rates, it has been my experience that with what I will call “specialty cases,” the good lawyers who have the experience with and are willing to take those types of cases generally charge a premium. These cases routinely require an enormous amount of time and sticktoitiveness. Progress in cases against the state, particularly when politicians are involved, is often impeded or complicated by the defendant institution. Costs advanced are generally higher in these kinds of cases and it is often necessary to have multiple individuals working on the file, whose efforts are coordinated by one or more lead counsel.

6. While I have not had any personal experience with attorney Elizabeth A. Jones, I can say that I am personally familiar with Vance Day’s excellent reputation as a premier trial lawyer. I have seen Mr. Day’s legal acumen in several other cases and recognize he possesses the

skill set of a very experienced trial attorney. I have reviewed the biographical and professional background of both Mr. Day and Ms. Jones. And I have communicated with attorney Vance Day about the background of the lawsuit and the efforts that were required to succeed in this litigation, including reading Mr. Day's Declaration in support of Plaintiff's Motion for Attorney Fees, and that of Elizabeth Jones.

7. I have had years of experience with the Oregon Department of Justice and know their attorneys to be exceptional litigators who will consistently and effectively challenge their adversaries. I personally know Tracy Ickes White and know her to be an able and effective litigator. I know of Marc Abrams and understand him to be a very experienced and able trial attorney.

8. I am familiar with the Oregon State Bar 2022 Economic Survey and hold the opinion that it is, in general, a good baseline for understanding attorney fees charged throughout Oregon.

9. It is my opinion that the hourly rate of \$500 for lead counsel in a case like this is very reasonable and consistent with the hourly rate charged by other comparably experienced attorneys in this state. Attorney Vance Day would command a higher hourly rate in similar cases.

10. It is also my opinion that \$394 per hour for an experienced associate is very reasonable and consistent with the amounts charged in this state. Attorney Elizabeth Jones, despite only been an Oregon attorney for three years, has relevant life experience and training which places her in the fee range of an experienced associate attorney.¹

11. In looking at the billings, I found that the plaintiff's counsel made a definitive effort to minimize the time involved. The billings are detailed, and the time allotted to each task or event

¹ I served with Col. Gerald Warren, who trained Ms. Jones. Her skills reflect his mentorship.

is reasonable and does not reflect block billing. The work performed by each attorney was appropriate and the charges therefore were reasonable.

12. In assessing the factors for fees set forth by the U.S. Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983), they favor awarding the Plaintiff his full request for fees here. Among other factors, it seems plain that the time and labor performed by Plaintiff's counsel was required in order to achieve success. I have read the Opinion and Order of the Court (ECF No. 80), and from what I can tell, the ruling of the Court is one of the first to establishing that elected officials may not inflict materially adverse actions against other elected officials in retaliation for their protected speech. This result reflects the novelty and difficulty of the issues presented in the case and since the law is complex it required considerable skill to conduct this litigation successfully. Representing conservative legislators or activists in Oregon is known as undesirable and here the Plaintiff's lawyers achieved declaratory relief on important matters of Constitutional law. These and other factors counsel in favor of awarding all the fees and costs that Plaintiff has requested.

13. This was a hard-fought, important, and successful First Amendment case. From what I have read and know about this case, it is my opinion that attorney fees of \$419,154.80 and costs of \$24,869.46 are certainly reasonable.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED this 31st day of July 2023.

/s/ Michael R. McLane

Michael R. McLane, OSB #904435
Attorney at Law

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF MICHAEL R. McLANE IN SUPPORT OF PLAINTIFF'S MOTION FOR ATTORNEY'S FEES on:

Tracy Ickes White
Marc Abrams
Oregon Department of Justice
100 SW Market Street
Portland, OR 97201
Attorneys for Defendants

by the following indicated method or methods:

- ☒ by **electronic means through the Court's Case Management/Electronic Case File system** on the date set forth below;
- by **emailing** a copy thereof to each attorney at each attorney's last-known email address on the date set forth below;
- by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to plaintiff's last-known address listed above and depositing it in the U.S. mail at Salem, Oregon on the date set forth below.

DATED this 31st day of July, 2023.

s/ Vance D. Day
Vance D. Day, OSB #912487
Elizabeth A. Jones, OSB #201184
Of Attorneys for Plaintiff